

MRS. S. E. UNDERWOOD.

FEBRUARY 14, 1910.—Ordered to be printed.

Mr. PATTERSON, from the Committee on Claims, submitted the following

ADVERSE REPORT.

[To accompany H. R. 888.]

The Committee on Claims, to whom was referred the bill (H. R. 888) for the relief of Mrs. S. E. Underwood, formerly widow of Samuel Ward, and the heirs of Samuel Ward, deceased, for loss of property by the Comanche and Kiowa Indians on or about July, 1872, October, 1873, and January, 1874, having considered the same, report thereon with a recommendation that it do not pass.

The purpose of this bill is to refer the claim to the Court of Claims, and give it jurisdiction to investigate and try said claim under the provisions of the Tucker Act, approved March 3, 1887, irrespective of the Indian depredation act of March 3, 1891.

Upon careful consideration the committee finds that the claim is barred by reason of the fact that it was not presented within apt time under statutes providing for the payment of such claims out of the funds of the Indian tribes or under the act of March 3, 1891.

The committee also finds that when a similar case was referred to the Court of Claims it was held that the court had no jurisdiction under the Indian depredation act and dismissed the case, and also because the evidence was not sufficient to establish the facts. (See *Vincent v. The United States*, 39 Ct. Cls. R., 456.)

Appended hereto is a letter from the Department of the Interior, which is made a part of this report.

DEPARTMENT OF THE INTERIOR,
Washington, February 8, 1910.

SIR: I have the honor to acknowledge receipt of your memorandum of January 20, 1910, transmitting for consideration and report a copy of H. R. 888, for the relief of Mrs. S. E. Underwood, formerly widow of Samuel Ward, and the heirs of Samuel Ward, deceased, which authorizes the payment to Mrs. S. E. Underwood, formerly widow of Samuel Ward, and the heirs of Samuel Ward, deceased, of the sum of \$3,270, in full compensation for loss of property sustained by him at the hands of the

Comanche and Kiowa Indians on or about July, 1872, October, 1873, and January, 1874, and confers jurisdiction on the Court of Claims to investigate and try the case under the provisions of the Tucker Act, approved March 3, 1887, irrespective of the Indian depredation act of March 3, 1891.

An examination of the records of the Indian Office fails to disclose that any Indian depredation claim has been filed on behalf of Samuel Ward. The department therefore can not advise you concerning the merits of the case.

Leaving out of consideration the question of whether the Court of Claims would have jurisdiction under the Tucker Act (which provides only for the consideration of claims against the United States) if the bill were passed, the department does not believe the claimant is entitled to the relief sought.

There were upon the statute books of the United States at the time of the commission of the alleged depredation statutes providing for the payment of such claims out of the funds of the Indian tribes, under certain restrictions; and by the act of March 3, 1891 (26 Stat. L., 851), the Court of Claims was invested with jurisdiction to try such cases, and it was there provided that all claims not filed in the Court of Claims within three years after the passage of that act should be forever barred.

The long period of time which has elapsed since the commission of the alleged depredation makes it extremely difficult and almost impossible for the Government to obtain either reliable or accurate information for a proper determination of the facts, and the claimant has been guilty of laches in not presenting the matter at a time when a complete examination of the facts would have been possible.

The department respectfully recommends that the bill be reported unfavorably.

Very respectfully,

R. A. BALLINGER, *Secretary.*

HON. GEORGE W. PRINCE,
Chairman Committee on Claims, House of Representatives.

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